

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-10-TC-394
)	
STi Telecom Inc.)	NAL/Acct. No. 201132170024
(formerly Epana Networks, Inc.))	
)	FRN: 0007413867
Apparent Liability for Forfeiture)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 26, 2011

Released: September 1, 2011

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Epana Networks, Inc., now known as STi Telecom Inc., (referred to herein as “Epana” or “Company”),¹ has apparently willfully and repeatedly violated section 201(b) of the Communications Act of 1934, as amended (“Communications Act” or “Act”),² by deceptively marketing prepaid calling cards. Based upon our review of the facts and surrounding circumstances, Epana appears to target its marketing to immigrants with claims that, for a card costing just a few dollars, buyers can make hundreds if not thousands of minutes of calls to their native countries – when in fact, for that price, they will be able to use only a fraction of those minutes, due to Epana’s assessment of multiple fees and surcharges that are not clearly and conspicuously disclosed to consumers. Accordingly, we find that Epana has apparently violated section 201(b) of the Act, and is apparently liable for a proposed forfeiture in the amount of five million dollars (\$5,000,000).

II. BACKGROUND

2. A prepaid calling card is a retail product for which the consumer pays a specific dollar amount and which enables that customer to make domestic and/or international telephone calls. Such cards are frequently marketed to immigrant communities for calling a variety of international destinations and are especially popular with these communities, where many depend on prepaid calling cards to stay in touch with family and friends in their home countries. The cards are typically sold at retail in denominations of \$2, \$3, and \$5 at newsstands and in grocery and convenience stores. Companies often

¹ On August 9, 2011, Epana represented to the Commission that it remains the same entity, but has changed its corporate legal name to STi Telecom Inc. See letter from Roberta Kraus, General Counsel STi Telecom Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, August 8, 2011. The record developed in this case refers generally to Epana; accordingly, for clarity, we use the company’s former name herein. Epana is a New York corporation, whose principal address is 1250 Broadway, 30th Floor, New York, NY 10001. John Prinner, President and CEO; David Duncan, Chief Financial Officer, Treasurer and Assistant Secretary; and Daniel Marlo, Vice President, General Counsel and Secretary, are listed as contact persons for Epana. Accordingly, all references in this NAL to Epana, Company, or STi Telecom also encompass the foregoing individuals and all other principals and officers of Epana, now known as STi Telecom Inc.

² 47 U.S.C. § 201(b).

market prepaid cards under a variety of brand names and advertise them to consumers primarily using posters displayed in retail locations, and in some cases, through radio and television advertising.

3. The Enforcement Bureau began its investigation of Epana by directing a letter of inquiry to the Company requesting information and documents relating to its prepaid calling card services.³ According to its initial response,⁴ Epana provides telecommunications services through the use of prepaid calling cards, which are used by consumers primarily to make international calls, and it establishes the rates for its calling cards, including the rate at which minutes are deducted from the cards. Epana's calling cards are distributed to retail vendors by Epana's affiliate Kare Distribution, LLC, as well as by independent distributors. The retail vendors sell the cards to consumers using marketing posters that Epana designs and distributes.⁵

4. As part of its LOI response, Epana provided samples of the posters and calling cards it sold in 2009 and 2010.⁶ A typical poster designed and distributed by Epana includes the name of the calling card (e.g., "O.M.A.F.,"⁷ "la Cruda," "el Chavo," and "el Gorrion"), the name of the telecommunications provider whose network carries the calls, and representations about the number of minutes a consumer will receive when calling various countries and/or cities.⁸ The number of calling minutes listed on the sample of posters provided by Epana usually appears in large font size and/or bright colors.⁹ Additionally, the posters contain a large box listing various calling destinations, along with the number of calling minutes a consumer will receive to those destinations using the advertised calling card of a specified dollar value (e.g., "Guadalajara 1305 minutes \$5;" "783 minutes \$3"). Appearing on the bottom of the posters is a disclosure in very small font size relating to certain fees and surcharges that may apply when using the cards, including connection and disconnection fees, daily maintenance fees, and other fees assessed when using toll-free access numbers or calling from payphones.

5. Epana's calling cards themselves generally come in two parts: a top portion (or "hang tag") and a bottom portion, the size of a credit card, that can be separated from the top. The front of the cards identifies the name of and value of the card (e.g., \$2, \$3, \$5). The back of the top portion of the cards includes a disclosure about fees—the same disclosure that typically appears on its posters. For example, the disclosure on Epana's \$3 O.M.A.F. calling card reads as follows:

³ See Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Epana Networks, Inc., April 2, 2010 ("LOI").

⁴ See Letter from Mitchell F. Brecher, Counsel for Epana Networks, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, May 20, 2010 ("Response").

⁵ See *Response* at 3. Epana supplemented its initial response on July 29, 2010. See Letter from Mitchell F. Brecher, Counsel for Epana Networks, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, July 29, 2010, at 4 ("*Supplemental Response*").

⁶ Epana also provided a handful of audio and video advertisements for its cards. Epana further supplemented its response on December 13, 2010. See Letter from Mitchell F. Brecher, Counsel for Epana Networks, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Dec. 13, 2010 ("*Second Supplemental Response*").

⁷ O.M.A.F. is the acronym for the Organizacion Mundial de Adictos Al Futbol.

⁸ See, e.g., O.M.A.F. Poster, *Second Supplemental Response* at EPN 000868 and Eroika Poster, *Second Supplemental Response* at EPN 000870.

⁹ *Id.*

Card is for international calls only; may not be used for domestic calling in the USA. Maximum rate per minute is \$5. A minimum rate of \$0.001 per minute will apply. Up to \$1.99 connection or disconnection fee will apply to certain destinations. Regional and local phone company charges may apply. Daily maintenance fee of up to \$1.99 will apply. Calls may be rounded up to 3 minutes (except calls made from Florida, which may be rounded up to 1 minute only). Access from a payphone will incur an additional surcharge at a minimum of \$0.99 per call. Calls to cellular phones, calls originating from outside the continental U.S., and calls using 800 numbers are billed at higher rates. Rates and fees are subject to change without notice. Announced minutes are based on use of entire card in a single call. Fees and surcharges shall affect actual number of minutes delivered, can equal the amount of the rate of a call, and can substantially reduce the gross minutes available. Advertised minutes are gross minutes based on initial promotional rates, which will change over time. Net minutes equal gross minutes less deductions for service fees and surcharges. This card expires 30 days after the first use of the card.¹⁰

The back of the bottom portion of the card includes directions on how to use the card, a scratch off area that hides the Personal Identification Number (“PIN”) necessary to use the card, as well as a series of local access numbers, a toll-free access number, and a customer service number.

III. DISCUSSION

A. Apparent Violation of Section 201(b) of the Act

6. Section 201(b) of the Act states, in pertinent part, that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”¹¹ The Commission has found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices under section 201(b).¹² A practice that “convey[s] insufficient information as to the company’s identity, rates, practices, and range of services” may constitute a violation of section 201(b).¹³ Thus, a carrier that fails sufficiently to convey material information, such as rates, about its prepaid calling card services violates section 201(b) of the Act.

¹⁰ See *Second Supplemental Response* at EPN 000867.

¹¹ 47 U.S.C. § 201(b).

¹² See, e.g., *NOS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8133 (2001) (“*NOS*”) (finding that the companies engaged in deceptive marketing of their interstate communication services by failing to disclose clearly and conspicuously material facts regarding their promotional plan offerings and pricing methodology, in violation of section 201(b)); *Business Discount Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461 (2000) (“*BDP*”), *recon. granted in part and denied in part*, 15 FCC Rcd 24396 (2000) (finding that the company violated section 201(b) by using unjust and unreasonable telemarketing practices such as misrepresenting the nature of its service offerings); *Telecommunications Research & Action Center & Consumer Action*, Memorandum Opinion and Order, 4 FCC Rcd 2157 (Com.Car.Bur. 1989) (“*TRAC*”) (recognizing that section 201(b) provides a cause of action against carriers for failing to convey sufficient information about their rates, practices and range of services). See also Joint FCC/FTC Policy Statement For the Advertising of Dial-Around And Other Long Distance Services To Consumers, 15 FCC Rcd 8654 (2000) (“*Joint Advertising Statement*”).

¹³ See *TRAC*, 4 FCC Rcd at 2159. The full Commission has approvingly cited this passage from *TRAC* as indicating that such conduct violates section 201(b) of the Act. *BDP*, 15 FCC Rcd at 14469.

7. We find that Epana has apparently violated section 201(b) of the Act because it deceptively represents that buyers of its cards can use hundreds if not thousands of minutes to make calls to foreign countries for just a few dollars. In truth and in fact, buyers can use only a fraction of those minutes for calls, because Epana applies a variety of fees and surcharges that quickly deplete the card. Epana purports to disclose these fees and surcharges, but the fine print “disclosures” contradict the express and much more prominent claims in the main portion of the marketing materials. Moreover, even if the disclosures of the various fees and surcharges were not contradictory, they are in small print and not clear or conspicuous in relation to the claim of total available minutes that the disclosure is intended to modify, and the disclosure otherwise “convey[s] insufficient information as to the company’s identity, rates, practices, and range of services.”¹⁴

8. Epana uses posters displayed in retail locations as its primary vehicle for marketing its prepaid calling card services to consumers. As indicated above, Epana represents on its posters that consumers who purchase its cards will receive a specified number of calling minutes to specific countries or cities for a set price (*e.g.*, to Guadalajara, 1305 minutes for \$5; 783 minutes for \$3). Although Epana’s prepaid cards are often marketed as providing hundreds of minutes, the total number of minutes actually received by the consumer is significantly less once the various fees are applied, and if the consumer attempts to use the card to make multiple calls.¹⁵

9. Epana’s marketing materials and cards make certain disclosures about these fees, but they conflict with the express statements of how many calling minutes are available, and they are not adequate to counter the express and otherwise unqualified claim that consumers will be able to make hundreds if not thousands of minutes of calls for the marketed rate. As a preliminary matter, the font size of the advertised minutes and rate information completely dwarfs the disclosure.¹⁶ As described above, Epana’s posters typically advertise the number of calling minutes offered to certain countries in large, colorful, simple text, which is prominently displayed at the top or center of the poster. This information is not qualified in any way; *i.e.*, there is no suggestion that the consumer will receive “up to” the specified number of minutes, and no indication that the consumer must read the small print at the bottom in order to determine what he or she is actually purchasing. The main part of the poster stands in stark contrast to the disclosures regarding additional fees and surcharges, which are at the bottom of the posters in

¹⁴ *TRAC*, 4 FCC Rcd at 2159.

¹⁵ A card is exhausted when either its face value has been used up (*e.g.*, \$2), or when all of the available minutes have been used. For a discussion of how the fees may impact the value of the card as it is used, *see infra* ¶ 13.

¹⁶ Both academic research and the Commission’s experience with consumer issues have demonstrated that the manner in which providers display material information, including the charges, classifications, and terms of use, can have as much impact on a consumer’s decision to make a purchase as the information itself. *See generally* Colin Camerer, Samuel Issacharoff, George Loewenstein, Ted O’Donoghue & Matthew Rabin, *Regulation for Conservatives: Behavioral Economics and the Case for “Asymmetric Paternalism,”* 151 U. PENN. L. REV. 1211 (2003) (surveying regulatory strategies to address problems arising from systematic errors in consumer decision-making); Richard H. Thaler and Cass R. Sunstein, *NUDGE*, Yale University Press 2008 (concluding that information buried deep in the “fine print” is far less useful to consumers than information displayed clearly and prominently). *See also Joint Advertising Statement*, 15 FCC Rcd at 8654-55 (finding that if consumers are deceived by advertising claims, they cannot make informed purchasing decisions); *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (noting that the proper functioning of competitive markets is predicated on consumers having access to accurate, meaningful information in a format that they can understand).

significantly smaller type and easily overlooked, and in some cases, are blurred and indecipherable.¹⁷ While this same language is usually printed on the top portion (or “hang tag”) of Epana’s cards, it is similarly printed in extremely small font and difficult to read. Further, because the calling card is meant to be torn away from the hang tag for ease of carrying the card in a wallet and customer use, the disclosures on the hang tag afford the consumer little information at the actual point of use.¹⁸ Disclosures in fine print and in materials that reasonable consumers may not read or use are ineffective to ensure that consumers have an accurate and informed understanding of an advertising claim.¹⁹ We therefore conclude that Epana’s disclosures are not clear and conspicuous to the average consumer.

10. Additionally, even if Epana’s disclosures were more prominent, we find that they do not provide the information necessary for a consumer to determine what fees apply, the amounts of those fees, and when and how they will affect the number of calling minutes offered. To illustrate this point, we use the disclosure example in paragraph 5 above for Epana’s \$3 O.M.A.F. card, which is typical of the disclosures found in Epana’s marketing materials. First, despite advertising on its posters a specific number of minutes for a set price, Epana includes a disclosure that refers to a possible range of rates—the maximum being \$5 per minute and the minimum being \$0.0001 per minute. There is no meaningful explanation of how this range relates to the initial advertised rate or how it is applied. The card also refers to a range of possible connection or disconnection fees of “up to \$1.99” that will apply to “certain” destinations, but does not indicate exactly how much the fee will be, whether the fee applies when initiating a call or terminating a call, or both, or to which destinations it applies. Similarly, the disclosure includes an additional daily maintenance fee of “up to \$1.99” but does not specify the exact amount or when Epana will begin assessing the fee. The explanation of the range of fees and variety of other terms, conditions, and charges is so vague that it is impossible for a consumer to know when purchasing the prepaid card what fees will actually apply or how the fees will impact the number of calling minutes received. Thus, the disclosures are not in the “clear and unambiguous language” that the Commission has said is needed to ensure that they are effective.²⁰

11. We also find Epana’s description of fees associated with using 800 access numbers unclear and misleading. Epana’s disclosures state that “calls using 800 numbers are billed at higher rates.”²¹ The card does not specify what “higher” rates will apply. In addition, Epana highlights its 800 access number in bold, effectively encouraging the consumer to dial that number to access service, rather than dial the local access numbers provided.²² Given that a typical consumer would expect the 800 access number, like other 800 numbers, to be toll-free, this lack of clarity is particularly misleading. We therefore find that Epana does not convey sufficient information about its rates for the use of its 800 access numbers.

¹⁷ See, e.g., O.M.A.F. poster, *Second Supplemental Response* at EPN 000868; Las Gemelas poster, *Second Supplemental Response* at EPN 000865; and Pedro Infante poster, *Second Supplemental Response* at EPN 000860. See also Exhibit A.

¹⁸ See, e.g., O.M.A.F. calling card, *Second Supplemental Response* at EPN 000867.

¹⁹ *Joint Advertising Statement*, 15 FCC Rcd at 8663 (noting that prominence, proximity, and placement of disclosure in comparison to advertising representation affect effectiveness of disclosure); *id.* at 8659 (noting that disclosure about limitations on advertised long-distance rate likely ineffective when advertised rate appeared on peel-off stickers, without disclosure, that consumers were supposed to put on telephones).

²⁰ *Id.* at 8662.

²¹ See, e.g., *Second Supplemental Response* at EPN 000867.

²² Dialing a local access number could result in charges to the consumer by the consumer’s telephone company (if, for example, the number was a regional toll number), but would not reduce the available minutes on the card.

12. According to Epana, any discrepancies between the minutes advertised in its marketing materials and the minutes delivered to a customer are specifically addressed in Epana's disclaimers.²³ Epana explains that the fees indicated on the cards are the maximum fees which may be charged. "Fees start out at the bare minimum and over time they are added but do not exceed what is disclosed in the disclaimer."²⁴ Epana's O.M.A.F. card disclosure notes that "[f]ees and surcharges shall affect actual number of minutes delivered, can equal the amount of the rate of a call, and can substantially reduce the gross minutes available."²⁵ The disclosure also states that "announced minutes are based on use of entire card in a single call."²⁶ We find that these statements are inadequate to inform consumers fully about the possible reduction in the number of advertised minutes, the circumstances under which those minutes will not be received, or how to calculate the actual number of minutes provided.

13. To give context to why these disclosures are inadequate and the extent of the gulf between a consumer's reasonable expectation (based on Epana's marketing materials) and the consumer's actual experience (based on application of Epana's fees), consider the card that one of Epana's posters advertises as offering 783 minutes of calling to Guadalajara for \$3.²⁷ If a consumer makes a 60-minute call to Guadalajara, one would reasonably expect there to be 723 minutes remaining on the card. However, the card disclosure suggests that once the initial call is completed, a connection fee or disconnection fee of "up to \$1.99" applies. In addition, a daily maintenance fee of "up to \$1.99" applies. Thus, after one 60-minute call, potential post-call fees of \$3.98 would exhaust a card that was advertised to provide 783 minutes.²⁸ According to Epana, the advertised "number of minutes are based on use of entire card in a single call."²⁹ In other words, the only possible way a consumer could use all of the 783 advertised minutes would be to make a single 13-hour call from a local access number – a duration so lengthy as to make such calls highly improbable by the typical consumer. Even if the maximum post-call fees were not charged, because Epana's disclosure only contains a range of possible fees, it would be impossible for the consumer to determine *at the point of sale* what amount will apply to each destination.

14. Information regarding the existence, amount, and application of fees that affect the value of a calling card is material to consumers when deciding to purchase cards. The failure to provide such information clearly and conspicuously, because it deprives consumers of material information needed to make a purchasing decision, is a deceptive marketing practice. As the Commission stated in *NOS*,³⁰ if a consumer must take a series of complicated and confusing steps to try to calculate the charges and calling time based on the disclosure provided, such disclosure almost certainly would be misleading to consumers. Such a practice, then, would be unjust and unreasonable under section 201(b).

15. We find that the marketing materials used by Epana to sell its prepaid calling cards are misleading and deceptive regarding the rates and charges applicable to its service offerings. In addition, we find that Epana failed to disclose, in any meaningful way, material information about its rates, charges

²³ See *Supplemental Response* at 4.

²⁴ *Id.*

²⁵ O.M.A.F. calling card, *Second Supplemental Response* at EPN 000867.

²⁶ *Id.*

²⁷ See O.M.A.F. poster, *Second Supplemental Response* at EPN 000868.

²⁸ In the case of an accidental disconnection, if the maximum fees are applied, the card could be exhausted after a single minute.

²⁹ See *supra* ¶ 5.

³⁰ See *NOS*, 16 FCC Rcd at 8138 (2001).

and practices at the point of sale, resulting in substantial harm to consumers who purchased its prepaid calling cards. Accordingly, we find that Epana has apparently engaged in unjust or unreasonable marketing practices in violation of section 201(b) of the Act.

B. Proposed Forfeiture Pursuant to Section 503(b) of the Act

16. Section 503(b)(1) of the Act states that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.³¹ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act by common carriers.³² In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³³ Although the forfeiture guidelines do not establish a forfeiture amount for unjust or unreasonable practices, such as deceptive marketing practices, the guidelines do state that, “. . . any omission of a specific rule violation from the . . . [forfeiture guidelines], . . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.”³⁴ The Commission retains the discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act.³⁵

17. In *NOS*, the Commission found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices within the meaning of section 201(b) of the Act,³⁶ and concluded that each instance of such practices constituted a separate violation of section 201(b). The Commission noted that it had previously assessed a forfeiture amount of \$40,000 for each instance in which a carrier engaged in an unjust and unreasonable telemarketing practice in violation of section 201(b).³⁷ It explained, however, that “a straightforward application of a \$40,000 base forfeiture amount would likely produce a proposed forfeiture in the millions of dollars.”³⁸ Rather, taking into account the number of violations attributed to the two companies involved in the case, the Commission

³¹ 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(2).

³² 47 U.S.C. § 503(b)(2)(B). *See also* 47 C.F.R. § 1.80(b)(2). In 2008, the Commission amended section 1.80(b)(2) of the rules, 47 C.F.R. § 1.80(b)(2), to increase the maximum forfeiture amounts in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000).

³³ 47 U.S.C. § 503(b)(2)(E).

³⁴ *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Guidelines*, Report and Order, 12 FCC Rcd 17087, 17099, ¶ 22 (1997) (“*Forfeiture Policy Statement*”); *recon. denied*, 15 FCC Rcd 303 (1999).

³⁵ *Id.*

³⁶ *See NOS*, 16 FCC Rcd at 8133, 8142.

³⁷ *See id.* at 8141-8142 (*citing Business Discount Plan, Inc.*, Apparent Liability for Forfeiture, 15 FCC Rcd 14461 at 14471-72 (2000)).

³⁸ *Id.* at 8142.

determined that a \$500,000 forfeiture amount per company was sufficient to protect the interests of consumers and to deter future violations of the Act.³⁹

18. We find that each card that Epana marketed using deceptive advertising constitutes an independent unjust and unreasonable practice, and thus a separate and distinct apparent violation of section 201(b) of the Act.⁴⁰ Given the thousands of cards that Epana appears to have marketed, there is an extensive number of apparent violations in this case for which the Commission is empowered to propose a penalty.⁴¹ While the proposed forfeiture is higher than the proposed forfeiture in *NOS*, weighing the facts before us, and taking into account the extent and gravity of Epana's egregious conduct, as well as its culpability and information in the current record about its revenues, we find that a total proposed forfeiture amount of \$5,000,000 is appropriate under the specific circumstances of this case.⁴² The proposed forfeiture clearly must protect the interests of consumers and serve as an adequate deterrent. A lesser penalty would be inappropriate in light of Epana's failure to adequately provide material information about its rates to thousands of consumers who purchased the Company's prepaid cards. Moreover, in determining the amount of a proposed penalty, we seek to "guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business."⁴³ While we could propose a higher forfeiture based on Epana's 2010 revenues,⁴⁴ we believe the forfeiture we propose today is sufficient to protect the interests of consumers and serve as an adequate deterrent. In the event Epana continues to engage in conduct that apparently violates section 201(b)'s prohibition against unjust and unreasonable practices, such apparent violations could result in future NALs proposing substantially greater forfeitures and revocation of Epana's operating authority. Other prepaid calling card providers are also on notice that practices such as those engaged in by Epana are unjust and unreasonable, and that we may propose more significant forfeitures in the future as high as is necessary, within the range of our statutory authority, to ensure that such companies do not engage in deceptive marketing practices.

IV. CONCLUSION

19. We have determined that STi Telecom Inc. (formerly Epana Networks, Inc.) apparently violated section 201(b) of the Act. We have further determined that STi Telecom Inc. (formerly Epana Networks, Inc.) is apparently liable for a forfeiture in the amount of five million dollars (\$5,000,000).

³⁹ *See id.*

⁴⁰ In *NOS*, the Commission found that "each rate sheet sent to consumers constitutes a separate violation of section 201(b)." *NOS*, 16 FCC Rcd at 8133. Consistent with *NOS*, we find that the marketing of each card to consumers constitutes a separate apparent violation of section 201(b). *See also BDP*, 15 FCC Rcd at 14471-72 (assessing a forfeiture amount of \$40,000 for each instance in which the carrier engaged in an unjust and unreasonable telemarketing practice in violation of section 201(b)).

⁴¹ *See Grupo Marcatel Becomes the Largest Pre-Paid Calling Card Company in the World*, Financial Tech Spotlight (October 27, 2010) (stating that once Group Marcatel acquired Epana "the combined sales of both companies reach over 260 million cards per year." <http://financial.tmcnet.com/corporate-performance-management/news/2010/10/27/5097311.htm>).

⁴² The \$5 million penalty we propose is equivalent to applying a \$40,000 penalty to only 125 apparent violations that occurred within one year of this NAL. *See supra* note 40.

⁴³ *See Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17099.

⁴⁴ *See Epana 2011 FCC Form 499-A (Telecommunications Reporting Worksheet (Reporting Calendar 2010 Revenues))*.

V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b)(2)(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(2)(B), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, STi Telecom Inc. (formerly Epana Networks, Inc.) is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of \$5,000,000, for willful and repeated violations of section 201(b) of the Act, 47 U.S.C. § 201(b).

21. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,⁴⁵ within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, STi Telecom Inc. (formerly Epana Networks, Inc.) **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). STi Telecom Inc. (formerly Epana Networks, Inc.) will also send electronic notification to Johnny.Drake@fcc.gov on the date said payment is made. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

23. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See www.fcc.gov/osec/guidelines.html for further instructions on FCC filing addresses.

24. The Commission will not consider reducing or canceling a proposed forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁴⁵ 47 C.F.R. § 1.80.

25. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class mail to STi Telecom Inc. (formerly Epana Networks, Inc.), Attention: John Prinner, President and CEO; David Duncan, Chief Financial Officer, Treasurer and Assistant Secretary; and Daniel Marlo, Vice President, General Counsel and Secretary, 1250 Broadway, 30th Floor, New York, NY 10001; and to Mitchell F. Brecher, Counsel for STi Telecom Inc. (formerly Epana Networks, Inc.), Greenberg Traurig, LLP, 2101 L Street, N.W., Suite 1000, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary